foreign port to England. On the voyage some of the sheep were washed overboard by reason the defendant's neglect to take a precaution enjoined by an order of Privy Council, which was made under the authority of the Contagious Diseases (Animals) Act (1869), s. 75:—

"Held, that the object of the statute and the order being to prevent the spread of contagious disease among animals, and not to protect them against perils of the sea, the plaintiffs could not recover." *Ward* v. *Hobbs*—4 App. Cas. 13, was a similar case.

He submitted an action would not lie because the statute was not intended to apply to the kind of damage which had been caused. The Merchant Shipping Ordinance, as a whole, should be examined to see if there was any right of action.

Mr. Hume, for the Company, in answer to Mr. Mills's first contention argued (correctly, in my opinion) that the law as laid down by Lord Watson and cases like *Allen* v. *Flood* and *Lumley* v. Gye did not apply to our case, where there was no question of contractual relations, this Petition of Right being a claim in tort. In this Colony the Crown is liable in tort, *Attorney-General* v. *Wemyss*, 13 App. Case 192 at page 197. In England the Crown is not liable. Mr. Hume submitted that to authorize a wrong was to do a wrong. The Government authorized the Owner of the motor vessels to violate the provisions of the Merchant Shipping Ordinance. In England the King cannot authorize a wrong—*Feather* v. *Regina*—14 Rev. Rep. 413, 414.

Further, Counsel for the petitioners submitted that cases like *Gorris* v. *Scott* and *Ward* v. *Hobbs*, were founded on contract, they were cases of non-feasance, ours was a case of misfeasance.

I am of opinion that the principle laid down in *Gorris* v. *Scott* and similar cases is a fatal objection to the Petitioners' claim. The harm they have suffered was not the particular sort of mischief which the Ordinance was intended to prevent.

When we examine section 14 of Ordinance No. 125 (Merchant Shipping) we find it is a re-enactment of section 15 of Ordinance 32 of 1910, which is taken from section 13 of the Indian Act 1 of 1859, a law that was in force in the Straits Settlements. It will be noticed that the penalty of Rupees five hundred has become our penalty of dollars five hundred. This Section of the Indian Act is copied from section 136 of Part III of the Merchant Shipping Act of 1854, which in its turn is based on section 30 of the Mercantile Marine Act of 1850. There for the first time we find that certain officers must "have obtained and possessed valid certificates either of competency or service appropriate to their several stations." When we look at the preamble of this Act we see it runs thus "Whereas it is expedient to make provision for improving the conditions of masters, mates and seamen, and for maintaining discipline in the British Merchant Service. Be it enacted etc.".....

It is quite clear, therefore, that the object, and the sole object, of this provision as regards certificated officers was to improve their conditions, that is, it was meant to improve their professional status. It was not even intended, apparently, as a precaution against the dangers of navigation. The damage which the petitioners are alleged to have suffered was due to loss of trade. If the Petitioners' claim had been based on a loss of professional status the objection raised would not have applied.

Mr. Hume's reply was that *Gorris* v. *Scott* was a case of non-feasance. It is quite true that in his judgment in that case Pollock B. said "I agree that it is essential to remember that this action is founded on a contract between the freighter and the shipowner," but if we look at the judgment of Kelly, the Lord Chief Baron, we find no such distinction. On the contrary, the illustration he gives (on page 128 of the report) which refers to the breach of a railway company of its duty to erect a gate at a level crossing and to keep the gate closed except when the crossing was being actually and properly used, the object of the precaution being to prevent injury through animals or vehicles being upon the line at unseasonable times, is an illustration in tort.

I am satisfied that the principle applies to cases of contract as well as of tort, and accordingly this petition must be dismissed with costs.

I certify for two counsel.

Order accordingly.

Solicitors for the Plaintiffs—*Adams & Allan.*

F. M. S.

[ORIGINAL CIVIL JURISDICTION]

IN THE MATTER OF THE ESTATE AND EFFECTS OF LEONG THONG, DECEASED.

[SELANGOR PROBATE No. 11 of 1930]

Probate and Administration Enactment, 1920—Rescission of order revoking a grant of Probate.

There is no provision in the Probate and Administration Enactment, 1920, empowering the Court to rescind an order revoking a grant of Probate.

G. A. Hereford for the applicant.

Yek Yook Yin, the executrix, in person.

14—10—1932.

MUDIE, J.—This is a motion to rescind an Order of Court made on the 13th day of November

1931, revoking a grant of Probate of the Will of Leong Thong deceased to Leong Kong Lam.

Leong Thong died on the 13th day of October, 1929. His Will was proved, and Probate was granted to Yek Yook Yin (f) and Leong Kong Lam on the 24th day of January, 1930.

Leong Kong Lam failed in business and went to China in or about the month of May, 1931. He left no address and did not communicate with any one in this country. Certain applications for mining leases had been made by the deceased in his lifetime. These could only be issued to the executor and executrix. The signatures of both were necessary, unless the grant to Leong Kong Lam was revoked. The executrix accordingly applied for a revocation of the grant to him, and an order was made on the 13th day of November, 1931, revoking the grant to Leong Kong Lam.

Leong Kong Lam has returned to the Federated Malay States, and now brings this motion to rescind the order revoking the grant. The executrix does not oppose the application.

Counsel for the applicant contended that there was power to rescind the order in a proper case, and cited *In re Staoles*, 3 Hagg. Ecc. 560; 162 E.R. 1263.

Apart from the peculiar circumstances of that case, the decision is that of an ecclesiastical Court. Whatever the jurisdiction of the ecclesiastical Courts may have been, the jurisdiction of the Court in the Federated Malay States in Probate matters is regulated by the Probate and Administration Enactment, 1920. There is no provision in that Enactment empowering the Court to rescind an order revoking a grant of Probate.

In my opinion the Court has no jurisdiction to make such an order. The motion was accordingly dismissed.

From the above Judgment the applicant appealed. The appeal was heard on the 29th November, 1932, before **THORNE, AG. C.J.**; **GERAHTY, J.**, and **MCFALL, J.**, and was dismissed.

[APPELLATE CRIMINAL JURISDICTION]

K. A. IBRAHIM .. .. .. Appellant

vs.

PUBLIC PROSECUTOR .. .. Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 81 of 1932]

Excise Enactment, 1932, Sections 27 (i), 67 and 68—Sale of Liquor on unlicensed premises.

A customer of a firm of grocers, carrying on business in premises not licensed for the sale of intoxicating liquors, ordered a bottle of whisky by telephone to be called for later. This firm procured from a firm of whisky importers a bottle of whisky, which was sent to the grocery firm, together with an invoice, by messenger. This invoice showed that the transaction was between the whisky importers and the grocery firm only.

On receipt of the bottle of whisky and the invoice, the manager of the grocery firm paid the messenger the price of the whisky in cash, and placed the bottle on the counter together with a debit note. This debit note showed that the customer had bought this bottle of whisky from the grocery firm.

Before the customer could call at the grocers, an Assistant Superintendent of Trade and Customs searched the shop and took possession of the bottle of whisky. Upon the hearing of a summons against the manager of the grocery firm for attempting to sell liquor without a licence, the Magistrate found that there had been a sale at the shop of the grocery firm by this firm to the customer, and convicted the defendant:—

Held, that there was evidence upon which the Magistrate might properly hold that the sale was at the shop, and that the conviction was right.

J. M. M. Lewis for the Appellant.

Raja Musa, Deputy Public Prosecutor, for the Respondent.

Cur. ad. vult.

3—11—1932.

THORNE, AG. C.J.—The appellant was convicted at the Magistrate's Court at Ipoh on the 12th September, 1932, on a charge:—

> "That you on or about the 16th August, 1932, at about 3.30 p.m. did attempt the sale of intoxicating liquor to wit one quart bottle of Johnnie Walker Red Label Whisky to one Mrs. E. K. Smith without a licence as required under Section 27 (*i*) of Enactment 12 of 1932 and thereby committed an offence under Section 68 of Enactment 12 of 1932 punishable under Section 67 of the same Enactment."

The appellant was also charged in the alternative with having in his possession for sale a bottle of whisky he not being duly licensed to sell intoxicationg liquors.

Upon the first charge the Magistrate imposed a fine of five dollars and ordered the destruction of the bottle of whisky and acquitted and discharged the appellant on the alternative charge.

From this conviction and sentence the appellant appealed.

The facts as proved may be stated succinctly as follows:—

On the 16th day of August, 1932, a Mrs. Elizabeth Kemp Smith telephoned to the Ipoh shop of a firm of grocers called M. S. Ally and Company, of which the appellant was then the manager, an order for one bottle of fresh plums and one bottle of Johnnie Walker Red Label Whisky for which she arranged to call later in the day.

M. S. Ally and Company, not being licensed for the retail sale of intoxicating liquors telephoned to the office of Messrs. Caldbeck, Macgregor and Company, the importers of this brand of whisky, for one bottle which was sent to their shop by a messenger who delivered it to them with the invoice Exhibit D which reads:

No. 1331.

IPOH, Order No.....

Date: 16th August, 1932.

Messrs. M. S. Ally & Co.,

Ipoh.